

## REMARKS

### Paragraphs 1 and 2 of the Office Action

5 The drawings are objected to under 37 CFR 1.83(a) because they fail to show the front wall.

The specification has been amended to include reference numeral 19 for the front wall and the same has been added in the included Figures.

The drawings are objected to because in fig. 3 the power supply is shown as charging the (wall) plug outlet.

10 Applicant is using the electrical outlet of a dwelling or is hardwiring the current device to the electrical grid of a dwelling. Figure 3 is a box diagram only to show generically that applicant's device is electrically coupled to some electrical power supply regardless of its source. Thus, element 5 is a generic power supply. More specifically, the power supply is a power outlet 7 of a dwelling or the electrically wiring 8 of a  
15 dwelling. Therefore, Figure 3 is believed to be correct in its current form and the Examiner is requested to supply more information as to a suitable manner of correcting Figure 3 should corrections still be required.

Withdrawal of the objection is respectfully requested by the applicant.

### 20 Paragraphs 3 and 4 of the Office Action

The specification is objected to.

The applicant has made the changes required by the Examiner to better clarify the specification as apparently there was some confusion to the Examiner.

25 As to the questions of the power supply, it is believed they have been answered by the statements above that element 5 is a generic electrical power source meant only to aid one in understanding the generic structure of applicant's device. As stated, this may be an outlet plug which may be plugged into, or may be hardwiring. The switch 14 allows a person to draw electrical power off of the batteries in times of power interruption from element 5 or ensures that the power will flow to the batteries so that they will be charged.

30 As to the title, it is believed that the title is accurate and that it is the Examiner's mischaracterization of applicant's invention which has lead to this finding, and the

findings of obviousness below. When a battery is placed in the recharging unit, it becomes charged. The batteries then will supply power to a small appliance plugged into the outlet 18 if the power supply is interrupted. The batteries are left in the recharging unit and switched out with depleted batteries as needed. The depleted batteries are then charged and retained within the housing where they become the back up power supply. The chances that there would be a power interruption during recharging is slight, and therefore there would always be backup power supply by the rechargeable batteries.

Withdrawal of the objection is respectfully requested by the applicant.

10

**Paragraphs 5 and 6 of the Office Action**

Claims 1 and 2 are rejected under 35 U.S.C. §103(a) as being unpatentable over Evjen in view of Hoffman.

It is first noted that Evjen does not disclose an inverter. Evjen discloses a transformer. An inverter will change the direct current from the batteries to alternating current which is needed by the electrical appliances plugged into applicant's device. Evjen discloses a transformer for, most likely, stepping down the voltage to the appropriate magnitude required. This is one of the primary elements of applicant's device which differentiate it from a simple battery charger. The stored energy of the batteries may be used to power an electrical appliance by switching over to the inverter and drawing power from the batteries.

Second, as to Hoffman, the Examiner has taken the position that the structure must be obvious based on pure speculation as there are no teachings in either Hoffman or Evjen that an outlet should be electrically coupled to batteries or an inverter. Hoffman is simply a conventional charger. The switch either turns a motor on or off. In the off position, the switch directs power from an electrical source to the battery and in the on position, power is directed from the battery to the motor 36. However, applicant's switch directs power either from an inverter or from a conventional power source to a plug outlet. Applicant's switch does not direct electricity to a battery charger. There is no conceivable way that a person, reading these two references, would contemplate applicant's device. First, there is no outlet and second, the structures each lend

themselves only to charging a battery and not switching an outlet between two power sources. That the Examiner still made this combination, without any possible motivation being found within the references, is evidence of hindsight reconstruction wherein the Examiner used applicant's claims as a template.

5 Presuming *arguendo* that the references show the elements or concepts urged by the examiner, the examiner has presented no line of reasoning, and we know of none, as to why the artisan viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the  
10 claimed invention. In the instant application, the examiner has done little more than cite references to show one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to  
15 a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

20 Ex parte Clapp, 227 USPQ 972, 973 (PTO Bd. App. 1985). Here there is even greater evidence that the Examiner has used hindsight reconstruction as the Examiner has imparted structures into Evjen and Hoffman which are not found in their specifications.

Third, the Examiner has stated that the plug outlet position is simply a  
25 modification and therefore is not patentably distinguishable from the prior art. This is not the law because the issue of criticality of positioning must first be addressed. Applicant's device is being used as a pass-through device so that it can be used with electrical appliances. Thus, the outlet needs to be positioned in a convenient location that will not be easily obstructed and that will operate easily with conventional power source and  
30 electrical appliance configurations. Also, applicant's device may be mounted in wall surface and therefore the positioning of the outlets would have to be in the front wall. Regardless of this finding, the Examiner simply glossed over the fact that no outlet was even cited in the prior art. Even if the Examiner is correct that the positioning is not critical, the Examiner must still find the element in order to position it in the first place.  
35 Thus, the combination is not only lacking an inverter but also an outlet.

Because the combination is not suggested in the prior art and because the elements of an inverter and plug-ins are not found in the prior art, it is believed that claims 1 and 2 are in condition for allowance.

Withdrawal of the rejection is respectfully requested by the applicant.

5

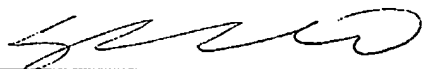
**CONCLUSION**

5

In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

10



Sean A. Kaufhold (Reg. No. 46,820)  
P.O. Box 131447  
Carlsbad, CA 92013  
(760) 470-3368 FAX (760) 736-8449

Date: 3/17/05

15